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OGC 73-0483

21 March 1973

Janet
File
11652
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MEMORANDUM FOR: SA/Information Control

SUBJECT : Official Use Only v. Privileged Information

1. This is in response to your memorandum of 8 March, subject as above, and our several subsequent telephone conversations.
2. The question posed by your memorandum is whether the substitution of the term "Privileged Information -- Not To Be Released -- Exempt From Freedom of Information Act" for the term "Official Use Only", as documents markings, would provide sufficient protection against release of documents. The information involved is information derived from overt sources which want to be treated as confidential sources for business reasons, or is derived under circumstances involving copyright protection.
3. The Freedom of Information Act authorizes the Agency to decline to release documents or information which involves "trade secrets and commercial or financial information obtained from a person and privileged or confidential". The quoted language, together with a Department of Justice background memorandum issued at the time the statute was enacted, are clear that information of the first category above, that is, that obtained from overt sources which want to be treated as confidential, may be withheld from the public. The proposed marking therefore, together with appropriate regulatory language concerning the handling and treatment of documents so marked, would seem to furnish adequate protection for that category of information.
4. Information is not exempt from disclosure under the Freedom of Information Act merely because of copyright features. Therefore, unless copyrighted information falls under an exemption under the Freedom of Information Act, such as the one quoted above, the proposed marking would not be appropriate for documents which concern such information. However,

the stamp could be modified by deleting the last portion ("Exempt From Freedom of Information Act"). The documents then would at least receive the protection of the requirement that they are "Not To Be Released".



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Associate General Counsel